

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 AEROVISTA PLACE, SUITE 101
SAN LUIS OBISPO, CALIFORNIA**

**RESOLUTION NO. R3-2008-0060
(DRAFT)**

Waiver of Waste Discharge Requirements

For

**ENGINEERED ONSITE DISPOSAL SYSTEM
MOELLER RESIDENCE, 192 SAN REMO ROAD
CARMEL HIGHLANDS
(APN 243-181-005)
Monterey County**

The California Regional Water Quality Control Board, Central Coast Region (hereinafter Water Board) finds that:

1. California Water Code Section 13260(a) requires that any person discharging waste, or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Water Board a report of the discharge ("report of waste discharge" or "ROWD") or other report containing such information and data as may be required by the Regional Board.
2. California Water Code section 13263 authorizes the Water Board to prescribe waste discharge requirements that implement the Water Board's Water Quality Control Plan.
3. California Water Code Section 13269 authorizes the Water Board to waive the issuance of waste discharge requirements provided that the waiver of waste discharge requirements is consistent with applicable water quality control plans and is in the public interest. In addition, any waiver must be conditional, may not exceed five years in duration, and may be terminated at any time. The waiver must also require monitoring unless the Regional Board determines that the discharges do not pose a significant threat to water quality.
4. The Water Quality Control Plan for the Central Coast Region (Basin Plan) designates the beneficial uses of waters within the Region, specifies the water quality objectives to protect the beneficial uses, establishes prohibitions, and establishes implementation policies to implement the water quality objectives. Pursuant to Chapter 2 of the Basin Plan, present and potential beneficial uses of groundwater (both shallow and deeper water-bearing zones) underlying the property include domestic and municipal water supply, agricultural water supply, and industrial water supply. The Basin Plan incorporates the state's drinking water standards adopted by the California Department of Public Health as water quality objectives.

BACKGROUND

5. The Monterey County Board of Supervisors adopted Ordinance No. 5093 on November 17, 2007. Ordinance No. 5093 extends Interim Ordinance No. 5086, adopted on October 2, 2007, which temporarily limits new development in the Carmel Highlands that has the potential to generate wastewater and temporarily limits the construction of new wells pending an area-wide study and consideration of an Onsite Wastewater Management Plan by the County. Ordinance No. 5093 also contains an exemption to allow a limited number of pending applications to be processed subject to specified standards as outlined in Ordinance No. 5093. The proposed project is one of the pending applications (listed in Exhibit 2 to Attachment 1 of Ordinance No. 5093). Interim Ordinance No. 5086 and Ordinance No. 5093 are attached hereto as Exhibits 1 and 2, respectively, and incorporated herein by reference.
6. The subject site consists of a 0.61-acre residential property located in the Carmel Highlands. The property is within an unincorporated portion of Monterey County and is not within a sewer services district and requires an onsite wastewater disposal system. However, the subject property is within the Carmel Riviera Mutual Water Company service area and does not require an onsite water supply well. The property owner, Michael Moeller (hereafter Discharger), applied for a permit with the Monterey County Division of Environmental Health (County) to install an engineered onsite wastewater disposal system. The proposed onsite disposal system consists of an advanced treatment system with ultraviolet disinfection and subsurface drip irrigation as the primary mode of disposal with shallow pressurized gravel-filled dispersal trenches as secondary disposal. Both the primary and secondary disposal systems are designed to handle 100% of the design flow for the proposed residence
7. The Basin Plan and July 1979 Memorandum of Understanding between the Central Coast Water Board and County specifically prohibit the County from approving engineered onsite disposal systems for sites unsuitable for standard systems. The Basin Plan allows that the Water Board or Executive Officer may grant exemptions for engineered onsite disposal systems given sufficient justification that the continued operation of such systems in a particular area will not individually or collectively, directly or indirectly, result in pollution or nuisance, or affect water quality adversely.
8. An application containing a Report of Waste Discharge: Supplemental Form for Regional Board Subsurface Disposal Exemption Submittal and associated design documents for the proposed engineered system was submitted to the Water Board by the County on behalf of the Discharger. The Monterey County Department of Health certified (signed) the Supplemental Form on June 4, 2008. The onsite disposal system design was prepared by Andrew Brownstone, BioSphere Consulting, and is dated May 14, 2008. The geotechnical investigation report

(percolation tests) was prepared by Richard Dante, Soil Surveys, Inc., and is dated November 2, 2001.

9. The secondary disposal system (shallow pressurized rock filled-dispersal trenches) was designed using a loading rate of 0.8 gallons per day per square foot (gpd/ft²). The Basin Plan recommends a loading rate of 0.25 gpd/ft² for the observed [average] onsite percolation rate of 35 minutes per inch (mpi) as determined from four deep soil (up to 40 feet below ground surface) percolation test pits on the subject property and adjacent parcel at 194 San Remo Road. Monterey County Ordinance No. 5093 recommends a maximum loading rate of 0.6 gpd/ft² based on the observed average percolation rate of 35 mpi. The primary subsurface drip irrigation disposal system was designed using a loading rate of 0.45 gpd/ft² per manufacturer specifications as based on the observed onsite soil profile and characteristics. The higher design loading rate for the secondary disposal system is based on the observation of five additional onsite soil borings (to depths of 5.5 feet below ground surface) conducted by the system designer, shallow (near surface) soil infiltration testing conducted in similar soils within the Carmel Highlands area (220 Upper Walden Road), and the advanced treatment system effluent quality. In addition, both the primary and secondary disposal systems are designed to handle 100% of the design flow for the proposed residence. A Basin Plan exemption is therefore also required for a variance from the recommended loading rate "System Design" criteria contained within the Basin Plan for the secondary disposal system.
10. Aside from the 0.8 gpd/ft² loading rate for the secondary disposal system, design criteria and site conditions meet the recommended numeric Basin Plan criteria for a conventional onsite wastewater disposal system. However, County Ordinance 5093 requires the implementation of an engineered [or advanced] onsite wastewater treatment and disposal system.
11. The proposed onsite disposal system meets the applicable requirements of County Ordinance No. 5086 and No. 5093. Monterey County exempted the project applicant from conducting the "Soils Study" requirements contained within Section 2 of Ordinance No. 5093 in a letter dated June 30, 2008. The Soils Study requirement is intended to gather additional site data for establishing appropriate setbacks of disposal systems from water supply wells. The County did not require the Soils Study because the subject site is within the Carmel Riviera Mutual Water Company service area and there are no water supply wells within 250 feet of the subject site.
12. The proposed system will also be subject to nonstandard permit conditions applied by the County prior to issuing a building permit. The nonstandard permit conditions require an operations and maintenance contract and deed notification. The nonstandard permit conditions and deed notification (June 27, 2007 template) are attached hereto as Exhibits 3 and 4, respectively, and incorporated herein by reference.

13. The Executive Officer approved the Basin Plan exemption and notified the Discharger of the proposed Waiver on July XX, 2008.
14. The Water Board has considered the design information provided in the application package and has required the Discharger, as a condition of this waiver, to comply with all Monterey County Ordinances and permit requirements.
15. Individual subsurface disposal systems for domestic residences are categorically exempt from the California Environmental Quality Act as set forth in California Code of Regulations, Title 14, Section 15303.
16. The Water Board finds that if the onsite disposal system is properly operated and maintained in accordance with the conditions of this Resolution this waiver of waste discharge requirements is in the public interest and consistent with the Basin Plan.
17. This waiver of waste discharge requirements is in the public interest because:
 - a) The discharge is already regulated by another governmental entity;
 - b) This Waiver requires the discharger to observe reasonable practices to minimize the deleterious effects of the discharge;
 - c) This Waiver requires the discharger to implement feasible treatment methods to control the waste constituents in the discharge; and
 - d) This Waiver includes conditions that will adequately protect beneficial uses while allowing the Water Board to use more of its resources to conduct field oversight, public outreach and, where necessary, enforcement.
18. The proposed onsite disposal system is regulated by Monterey County, which requires the Discharger to implement design and operational controls, maintenance activities, regular monitoring and reporting, and deed restrictions to prevent water quality impacts.
19. This waiver is consistent with the Basin Plan because it:
 - a) Prohibits pollution, contamination or nuisance;
 - b) Requires monitoring and compliance with applicable Basin Plan prohibitions and Monterey County Ordinances and permit requirements; and
 - c) Requires the Discharger to grant access to Water Board and Monterey County staff to perform inspections.
 - d) Requires the onsite disposal system to comply with the Basin Plan's criteria for onsite systems.
20. Pursuant to California Water Code Section 13269, this action waiving the issuance of waste discharge requirements for this on-site domestic wastewater disposal system: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be

required by other local or governmental agencies, and (e) does not preclude the Water Board from administering enforcement remedies (including civil liability) pursuant to the California Water Code.

21. Operation of the proposed onsite disposal system consistent with this Resolution is not anticipated to degrade groundwater and is consistent with State Water Resources Control Board Resolution 68-16 ("Policy for Maintenance of the High Quality of Waters of the State"). State Water Board Resolution No. 68-16 requires the Regional Board to maintain the high quality of waters of the state unless the Regional Board determines that some degradation of waters is consistent with maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than set forth in the Basin Plans. The Regional Boards must ensure that waste discharge requirements will result in best practicable treatment or control of the discharge necessary to ensure that pollution or nuisance will not occur and the highest water quality is maintained. In short, the degradation may not violate water quality objectives and must not unreasonably affect existing and designated beneficial uses. Operation of the proposed system is consistent with Resolution 68-16 because it is designed to treat the domestic wastewater to secondary standards (85% reduction of biochemical oxygen demand and total suspended solids), remove 65% of total influent nitrogen, and disinfect the effluent prior to disposal via ultraviolet treatment.
22. The monitoring and reporting requirements of this Resolution [pursuant to Section 2 of Monterey County Ordinance 5093] are imposed pursuant to CWC Section 13267. The monitoring and reporting are necessary to ensure compliance with the conditions of this Resolution and to verify the adequacy and effectiveness of the conditions.
23. The Regional Board provided an opportunity for a public hearing on October 17, 2008, in Santa Barbara, California, and considered all comments and evidence concerning this matter.
24. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Board must receive the petition within 30 days of the date of this Resolution. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE BE IT RESOLVED:

1. In accordance with California Water Code Sections 13267 and 13269, waste discharge requirements for the proposed onsite domestic wastewater disposal system are hereby waived subject to the following conditions:

- a) The onsite disposal system shall be installed under the oversight of Monterey County and the designer per the April 4, 2008 Alternative Onsite Wastewater System Design by Andrew Brownstone, BioSphere Consulting, and be operated and maintained in accordance with applicable Monterey County Ordinances and permit conditions, the Basin Plan criteria and manufacturer specifications.
- b) The Discharger shall comply with all applicable Monterey County Ordinances and Permit Conditions [including Section 2 of County Ordinance No. 5093 and nonstandard permit conditions].
- c) The Discharger and future property owners shall be subject to the requirements of the County's pending Onsite Wastewater Management Plan.
- d) The sewage disposal system shall be inspected every two years for solids buildup and be pumped as required by a licensed septic tank contractor.
- e) Peak daily flow shall not exceed 900 gallons per day.
- f) Use of the individual sewage disposal system shall not create a condition of pollution, contamination, or condition of nuisance, as defined by CWC Section 13050.
- g) Only domestic wastewater shall be discharged to the individual sewage disposal system.
- h) The use of self-regenerating water softeners is prohibited; water softening devices shall be of off-site regenerated cartridge type only.
- i) The Discharger shall install and utilize low flow plumbing fixtures on all appurtenances such as toilets, showers and faucets. Low flow dishwashers and front loading clothes washing machines are also strongly recommended.
- j) The Discharger shall immediately notify the Water Board and Monterey County of any proposed change(s) in discharge volume, nature, or location.
- k) The Discharger shall immediately notify the Water Board and Monterey County of any discharges threatening water quality or public health.
- l) The Discharger shall allow the Water Board and Monterey County to inspect the onsite disposal system at any time to evaluate compliance with this Waiver.
- m) Operation of the sewage disposal system shall not result in the daylighting (surfacing) of effluent from the disposal area or other portions of the system.
- n) The Discharger and future property owners shall also provide copies of all monitoring data per County requirements to the Water Board.
- o) The Discharger shall inspect the sewage disposal system every two years for solids buildup and have it pumped out as required by a licensed septic tank contractor.
- p) If the Discharger transfers the property, the Discharger shall notify the new owner

of this Waiver of Waste Discharge Requirements and shall notify the Water Board of the transfer within 30 days of transfer.

2. This Waiver shall not create a vested right to discharge and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.
3. The Executive Officer or Water Board may terminate the applicability of the Waiver described herein at any time.
4. This Waiver shall become effective on **October 17, 2008**, and shall expire on **October 17, 2013**.
5. The Discharger may be subject to enforcement actions for violations of this Waiver pursuant to Division 7 of the California Water Code. As provided by California Water Code Section 13350(a), the Discharger may be civilly liable if in violation of a waiver condition or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on October 17, 2008.

Roger W. Briggs
Executive Officer